

SECRETARY OF STATE[721]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 9E.3 and 9E.7, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 43, “Notarial Acts,” Iowa Administrative Code.

The rules in Chapter 43 describe the requirements of a notarial act, including the effects of notarial acts under law. This amendment adds new rule 721—43.6(9E) pertaining to the revocation of a notary license pursuant to the requirements of the Iowa Administrative Procedure Act set forth in Iowa Code sections 17A.12 and 17A.18.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 6, 2011. Such written materials should be directed to the Office of the Secretary of State, Attn: Doug Struyk, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7041 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Also, there will be a public hearing on December 6, 2011, at 9 a.m., on the first floor of the Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Secretary of State’s office and advise of specific needs.

After analysis and review of this rule making, no substantial impact on jobs has been found. Although the rule addresses revocation of notaries’ licenses, notarizing is typically only one aspect of the job and little to no impact on jobs would exist.

This amendment is intended to implement Iowa Code sections 9E.3 and 9E.7.

The following amendment is proposed.

Adopt the following new rule 721—43.6(9E):

721—43.6(9E) Revocation of notary license. The secretary of state may revoke a notary license for cause. In the event that a formal complaint is received by the secretary of state, an investigation shall be conducted to determine if there is sufficient cause for revocation. The secretary of state’s office shall provide forms to complainants and notaries as required under this rule. Every direction of every instruction shall be complied with and each question or portion of every form answered in the same manner as if the forms and instruction were embodied in this rule.

43.6(1) The notary complaint and the notary’s response to the complaint are subject to the following procedures:

a. A formal complaint must be submitted to the secretary of state on a complaint form supplied by the secretary of state’s business services office. Each submitted complaint form must comply with the form instructions and include the basis for the complaint. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint. Incomplete complaint forms shall be returned to the complainant with a brief explanation stating the basis for rejection.

b. The notary who is the subject of the complaint shall be notified by the secretary of state within 15 days from the receipt of the complaint. The secretary of state shall provide a copy of the complaint and a notary response form.

c. The notary may submit a completed response form for the purposes of the complaint investigation within 15 days of receipt of the copy of the complaint and response form. A completed notary response form must be submitted by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. The notary response form shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark. If the notary does not respond within 15 days, the assistant director of business services may still conduct the investigation and reach a decision based on the information available.

d. The complainant and notary shall be duly notified of the decision and the assistant director's basis for the decision.

43.6(2) If the investigation reveals sufficient cause for revocation, the secretary of state shall send a notice of revocation to the notary by certified mail, return receipt requested. The notice shall state the cause of the revocation and shall inform the person of the right to a hearing on the revocation in accordance with the requirements set forth in Iowa Code section 17A.12(2).

43.6(3) Delivery of the notice of revocation as referred to in subrule 43.6(2) shall constitute commencement of the contested case proceeding. Contested case hearings shall be afforded to all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Every contested case shall comply with the requirements for informal and formal disposition outlined in Iowa Code section 17A.12 and shall follow the contested case hearing procedures set forth in Iowa Code section 17A.12 and in rule 721—3.6(17A).

43.6(4) A written appeal form requesting a contested case hearing shall be obtained from the office of the secretary of state and submitted within 15 days from the date of receipt by the notary who is the subject of the complaint of the decision of the assistant director of business services. A written appeal form must be submitted in writing by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. A request for hearing shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark.

a. If no appeal form is submitted to the secretary of state's office, the notary license is effectively revoked in accordance with Iowa Code sections 9E.3 and 9E.7. The assistant director of business services may proceed in the manner outlined in paragraph 43.6(4) "c."

b. If an appeal form is received, notice of the contested case hearing shall be prepared by the assistant director of business services and mailed by certified mail, return receipt requested, to the notary who is the subject of the complaint. The notice shall be sent at least 30 days before the date of the hearing unless an earlier date is agreed to by the parties and shall follow the notice requirements set forth in rule 721—3.5(17A). If the notary fails to appear or participate in a contested case proceeding after proper service of notice, the assistant director of business services shall proceed in the manner outlined in paragraph 43.6(4) "c."

c. A default decision may be granted or the assistant director of business services may proceed with the hearing and make a decision in the absence of the notary who is the subject of the complaint. The notary shall be duly notified of the decision and of the assistant director's basis for the decision. A decision by the assistant director may be vacated in accordance with Iowa Code section 17A.12(3). The decision is considered final unless a further appeal is initiated by the notary within 20 days of the date of notification or mailing of the decision.

43.6(5) Any notary who is the subject of the complaint may file an application for rehearing, stating the specific grounds and the relief sought within 20 days after the issuance of any final decision by the assistant director of business services in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining in the application.

a. The director of business services shall review the application for rehearing and notify all the parties of record if a rehearing has been granted. If a rehearing has been granted, the director of business services shall conduct the rehearing.

b. An application for rehearing shall be deemed to have been denied unless the secretary of state grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

43.6(6) A notary who is the subject of the complaint and who is aggrieved or adversely affected by a final decision of the secretary of state may seek judicial review of that decision by filing a petition either in Polk County district court or in the district court for the county in which the petitioner resides or has its principal place of business. Proceedings for judicial review shall be followed as provided in Iowa Code section 17A.19(2).